

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Jason Ray Jacobs
individually, and d/b/a Jacobs Exteriors

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Bruce H. Johnson (the "ALJ") for a prehearing conference on Thursday, August 10, 2006, at 3:30 p.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401. The prehearing conference was held pursuant to a Notice and Order for Hearing, Prehearing Conference and Statement of Charges, dated June 28, 2006.

Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (the "Department"). The Respondent, Jason Ray Jacobs, 9216 Page Avenue N.E., Otsego, MN 55330, did not appear in person or by counsel.^[1] The OAH hearing record closed on August 14, 2006, when the Department's affidavit in support of its motion for default was received.

STATEMENT OF ISSUES

1. Did the Respondent engage in unlicensed residential building contractor work in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, 326.842 and 326.91, subd. 1(5) and 4?^[2]

2. Did the Respondent violate a Consent Cease and Desist Order issued by the Commissioner on July 11, 2004, and thereby violate Minn. Stat. § 326.91, subds. and 4 1(5) by by circulating an advertisement for roofing, siding, and windows in May 2006?

3. And if either or both of the above is the case, should the Respondent be disciplined by the Commissioner?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 28, 2006, a copy of the Notice and Order for Hearing, Prehearing Conference and Statement of Charges in this matter was sent via first class mail to Jason Ray Jacobs, d/b/a Jacobs Exteriors, 9216 Page Avenue, N.E., Otsego, MN 55330, as appears from an Affidavit of Service by Mail on file herein.^[3] That address was the address that the Respondent had most recently provided to the Department. The U.S. Postal Service did not return that Notice to the Panel as undelivered or undeliverable.^[4]

2. The Notice and Order for Hearing, Prehearing Conference and Statement of Charges scheduled a prehearing conference in this matter on Thursday, August 10, 2006, at 3:30 p.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis , Minnesota 55401.

3. The Respondent did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief from either the ALJ or the Department.^[5]

4. The Notice and Order for Hearing, Prehearing Conference and Statement of Charges contained the following informational warning:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

5. Because Respondent failed to appear at the prehearing conference, he is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, Prehearing Conference and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 326.91, and 326.92, subd. 3.

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Between June 11, 2004, and the present, the Respondent has not held a license from the Department to engage in residential building contractor and residential roofer activities.

7. On June 11, 2004, the Department issued a Cease and Desist Order against the Respondent prohibiting further unlicensed residential building contractor activities.

8. Since June 11, 2004, the Respondent has continued to offer unlicensed residential building contractor activities, representing that he provides service "for all your home improvement needs and that he may perform two or more "special skills" that are defined under Minn Stat. § 326.83, subd. 19 and that are subject to licensure.

9. Minn. Stat. § 326.91 empowers the Commissioner to take disciplinary action against the Respondent, as a result of the Respondent's violations of Minn. Stat. §§ 326.91 and 326.92 in order to protect the public health, safety, and welfare.

10. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take such disciplinary action against the Respondent as he considers appropriate under the circumstances.

Dated: August 23, 2006.

s/Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Default (1 tape)
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

^[1] See Finding of Fact No. 3.

^[2] Unless otherwise specified all references to Minnesota Statutes are to the 2004 edition.

^[3] Affidavit of Service of Ann Kirlin dated June 28, 2006.

^[4] Affidavit of Christopher M. Kaisershot dated August 11, 2006.

^[5] *Id.*